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Masafumi Dounoue

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EXAMINER

MILLER, ALAN S

ART UNIT

PAPER NUMBER

3624

MAIL DATE

DELIVERY MODE

03/03/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/680,317	Applicant(s) DOUNOUE ET AL.	
	Examiner ALAN MILLER	Art Unit 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,13,14,18,19,23 and 24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,13,14,18,19,23 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response reply filed on 12/15/2008, in response to the application filed 10/8/2003 claiming benefit back to 10/8/2002.

Claims 1, 2, 13, 14, 18, 19, 23 and 24 are pending and have been examined, claims 3-12, 15-17 and 20-22 have been cancelled.

This action has been made FINAL.

Response to Arguments

2. Applicant's arguments with respect to claims 1, 2, 13, 14, 18 and 19 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims **1, 2, 13, 14, 18, 19, 23 and 24** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1, 2, 13, 14, 18, 19, 23 and 24 make reference to "activity times or an activity time". However, Examiner is unable to find support for this new

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matter added in the current amendments. Further, claims 1, 2, 13, 14, 18, and 19, make reference to "judging suitability of said work that staff member is doing based on said activity times or said activity time... said problem settlement rate for said negotiation, a threshold value of said number of activity times or said activity time, and a threshold value of said problem settlement rate". However, Examiner is not able to find support for this new matter in the current amendments. The new matter unable to find includes a threshold value of said number of activity times or said activity time, nor is Examiner further able to find support that the judging of suitability is based a number of activity time or an activity time, on a threshold value of said number of activity times or activity time, or on a threshold value of said problem settlement rate.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims **1, 2, 13, 14, 18, 19, 23 and 24** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims **1, 2, 13, 14, 18, 19** recite the limitation 'updating a number of activity times or an activity time', however it is unclear what an 'activity time' is. Turning to the specification, Examiner cannot find a definition, either implied or explicit, of what is considered to be an 'activity time'. For purposes of examination, Examiner will interpret an activity time as a time period. Clarification is requested. Claims 23 and 24 are rejected as being dependent from claim 1.

Claim **19** recites the limitation "either of said work" in line 21. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims **1, 2, 18, 19, 23 and 24** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

9. Claims **1, 2, 23 and 24** are rejected under 35 U.S.C.101. Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to a machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. *In re Bilski et al*, 88 USPQ 2d 1385 CAFC (2008); *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, in claim **1**, applicant discloses 'wherein the business management method is implemented by a machine', however, this is a merely a nominal recitation of an apparatus, and it fails to positively tie the statutory class to the steps, and therefore applicant's method steps fail the first prong of the new Federal Circuit decision since they are not tied to a machine and can be performed without the use of a particular machine. Thus, claims 1, 23 and 24 are non-statutory since they may be performed within the human mind.

Here, in claim **2**, applicant discloses 'wherein the business management method is implemented by a machine', however, this is a merely a nominal recitation of an apparatus, and it fails to positively tie the statutory class to the steps, and therefore applicant's method steps fail the first prong of the new Federal Circuit decision since they are not tied to a machine and can be performed without the use of a particular machine. Thus, claim 2 is non-statutory since it may be performed within the human mind.

10. Claim **18** is directed towards an apparatus comprising a *database* and *units*, however, *databases* and *units* are merely software and it has been held that software without a required computer-readable medium-storing software that, when executed, causes the computer to perform a particular process or method (MPEP 2106.01) is merely nonfunctional descriptive material and non-statutory under 35 U.S.C. 101.

11. Claim **19** is directed towards an apparatus comprising a *database* and *units*, however, *databases* and *units* are merely software and it has been held that software without a required computer-readable medium-storing software that, when executed, causes the computer to

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perform a particular process or method (MPEP 2106.01) is merely nonfunctional descriptive material and non-statutory under 35 U.S.C. 101.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims **1, 2, 13, 14, 18, 19, 23 and 24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Jilk et al. (U.S. 6,859,523, hereinafter Jilk) in view of Mukund (U.S. Pub. 2003/0069983).

14. In respect to claims **1, 13, and 18**, Jilk discloses judging suitability of said work that staff member is doing based on rules (see at least column 8, lines 38-59; wherein Jilk discloses quality assessment (QA) (i.e. *suitability of said work*), managed by a quality unit that evaluates task result (i.e. *activity state and settlement state of said problems*), configuring QA, including worker evaluation are settable, e.g. entries in a database parameters, and at least column 25, lines 24-68, wherein Jilk further describes the Quality Unit; See also column 8, lines 60-64, wherein Jilk discloses an evaluation unit, and column 23, lines 27-68 through column 24, lines 1-23, wherein Jilk further describes the Evaluation Unit, wherein the evaluation unit evaluates worker

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performance from each completed task (i.e. *judging suitability of said work that said staff member is doing*)).

Jilk does not explicitly disclose judging suitability of said negotiation that said staff member is doing, based on said number of activity times or said activity time, which is stored in association with said negotiation in said negotiation results database, said problem settlement rate for said negotiation, a threshold value of said number of activity times or said activity time and a threshold value of said problem settlement rate, nor does Jilk explicitly disclose:

by using a number of activity times or an activity time for a negotiation, which is received from a terminal of a staff member, updating a number of activity times or an activity time, which is already stored in association with said negotiation in a negotiation results database;

by using data concerning a pending problem for said negotiation, which is received from said terminal of said staff member, updating a first number of pending problems for said negotiation in said negotiation results database;

by using data concerning a settled problem for said negotiation, which is received from said terminal of said staff member, updating a second number of settled problems for said negotiation in said negotiation results database;

calculating a problem settlement rate for said negotiation by dividing said second number by said first number.

Mukund discloses:

by using a number of activity times or an activity time for a negotiation, which is received from a terminal of a staff member, updating a number of activity times or an activity

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time, which is already stored in association with said negotiation in a negotiation results database (see at least ¶0063, which discloses monthly task compliance that includes tasks completed year to date (i.e. *an activity time*)).

by using data concerning a pending problem for said negotiation, which is received from said terminal of said staff member, updating a first number of pending problems for said negotiation in said negotiation results database (see at least ¶0060, which discloses tasks to be performed (i.e. *updating a number of pending problems*); see also ¶0063, which discloses a report that shows active tasks (i.e. *updating a number of pending problems*));

by using data concerning a settled problem for said negotiation, which is received from said terminal of said staff member, updating a second number of settled problems for said negotiation in said negotiation results database (see at least ¶0062, which discloses a task status, and ¶0063, which discloses tasks completed year to date (i.e. *updating a second number of settled problems*));

calculating a problem settlement rate for said negotiation by dividing said second number by said first number (see at ¶0063, which discloses percentage of tasks completed year to date (i.e. *a problem settlement rate for said negotiation by dividing said second number by said first number*));

Mukund further discloses based on said number of activity times or said activity time, which is stored in association with said negotiation in said negotiation results database, said problem settlement rate for said negotiation (see at least ¶0063, which discloses percentage of tasks completed year to date (i.e. *said problem settlement rate based on said activity time*); see also ¶0064).

It would have been obvious to one of ordinary skill in the art to include in the evaluation unit rules of Jilk the calculating a percentage of tasks year to date done based on task status data collection as taught by Mukund since the claimed invention is merely a combination of old elements, and one of ordinary skill in the art would have recognized that it would produce a predictable result of including in the quality assessment rules Jilk, the percentage of tasks done year to date, since it is merely another parameter by which to evaluate a worker.

Neither Jilk nor Mukund explicitly disclose a threshold value of said number of activity times or said activity time and a threshold value of said problem settlement rate.

Examiner takes notes that threshold values are old and well known.

It would have been obvious to one of ordinary skill in the art to include in the evaluation unit rules of the combined invention of Jilk and Mukund the old and well known threshold values since the claimed invention is merely a combination of old elements, and one of ordinary skill in the art would have recognized that it would produce a predictable result of including in the quality assessment rules Jilk, the percentage of tasks done year to date, since it is merely another parameter by which to evaluate a worker.

Jilk further discloses transmitting to a manager terminal, data representing said suitability of said negotiation that said staff member is doing (see at least column 9, lines 14-18, wherein the evaluation unit is coupled to the capacity manager (i.e. *transmitting to a manger terminal*); and see also at least column 23, lines 60-62, wherein the evaluation unit de-certifies the work for a specific task skill (i.e. *suitability of negotiation that said staff member is doing*), and column 24, lines 1 – 8, wherein the de-certification (i.e. *negotiation that staff member is doing*) automatically generates a review task for the worker's manager (i.e. *transmitting to a manager*

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terminal data representing said suitability of work); see also column 6, lines 56-57, wherein a manager is a system user who works as a manager, and column 6, lines 1, wherein Jilk discloses at least one worker terminal (i.e. *manager terminal*)). Examiner notes that de-certification is representing suitability (e.g. worker's poor performance of a task skill) of said negotiation that staff member is doing, and that generating a review task for the worker's manager is transmitting data representing said suitability of said negotiation (e.g. de-certification).

15. In respect to claims **2, 14 and 19**, Jilk discloses judging suitability of said work that staff member is doing based on rules (see at least column 8, lines 38-59; wherein Jilk discloses quality assessment (QA) (i.e. *suitability of said work*), managed by a quality unit that evaluates task result (i.e. *activity state and settlement state of said problems*), configuring QA, including worker evaluation are settable, e.g. entries in a database parameters, and at least column 25, lines 24-68, wherein Jilk further describes the Quality Unit; See also column 8, lines 60-64, wherein Jilk discloses an evaluation unit, and column 23, lines 27-68 through column 24, lines 1-23, wherein Jilk further describes the Evaluation Unit, wherein the evaluation unit evaluates worker performance from each completed task (i.e. *judging suitability of said work that said staff member is doing*)).

Jilk does not explicitly disclose judging suitability of said negotiation that said staff member is doing, based on said number of activity times or said activity time, which is stored in association with said negotiation in said negotiation results database, said problem settlement rate for said negotiation, a threshold value of said number of activity times or said activity time and a threshold value of said problem settlement rate, nor does Jilk explicitly disclose:

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by using a number of activity times or an activity time for a negotiation, which is received from a terminal of a staff member, updating a number of activity times or an activity time, which is already stored in association with said negotiation in a negotiation results database;

by using data concerning a pending problem for said negotiation, which is received from said terminal of said staff member, updating a first number of pending problems for said negotiation in said negotiation results database;

by using data concerning a settled problem for said negotiation, which is received from said terminal of said staff member, updating a second number of settled problems for said negotiation in said negotiation results database;

calculating a problem settlement rate for said negotiation by dividing said second number by said first number.

Mukund discloses:

by using a number of activity times or an activity time for a negotiation, which is received from a terminal of a staff member, updating a number of activity times or an activity time, which is already stored in association with said negotiation in a negotiation results database (see at least ¶0063, which discloses monthly task compliance that includes tasks completed year to date (i.e. *an activity time*)).

by using data concerning a pending problem for said negotiation, which is received from said terminal of said staff member, updating a first number of pending problems for said negotiation in said negotiation results database (see at least ¶0060, which discloses tasks to be

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performed (i.e. *updating a number of pending problems*); see also ¶0063, which discloses a report that shows active tasks (i.e. *updating a number of pending problems*));

by using data concerning a settled problem for said negotiation, which is received from said terminal of said staff member, updating a second number of settled problems for said negotiation in said negotiation results database (see at least ¶0062, which discloses a task status, and ¶0063, which discloses tasks completed year to date (i.e. *updating a second number of settled problems*));

calculating a problem settlement rate for said negotiation by dividing said second number by said first number (see at ¶0063, which discloses percentage of tasks completed year to date (i.e. *a problem settlement rate for said negotiation by dividing said second number by said first number*));

Mukund further discloses based on said number of activity times or said activity time, which is stored in association with said negotiation in said negotiation results database, said problem settlement rate for said negotiation (see at least ¶0063, which discloses percentage of tasks completed year to date (i.e. *said problem settlement rate based on said activity time*); see also ¶0064).

It would have been obvious to one of ordinary skill in the art to include in the evaluation unit rules of Jilk the calculating a percentage of tasks year to date done based on task status data collection as taught by Mukund since the claimed invention is merely a combination of old elements, and one of ordinary skill in the art would have recognized that it would produce a predictable result of including in the quality assessment rules Jilk, the percentage of tasks done year to date, since it is merely another parameter by which to evaluate a worker.

Neither Jilk nor Mukund explicitly disclose a threshold value of said number of activity times or said activity time and a threshold value of said problem settlement rate.

Examiner takes notes that threshold values are old and well known.

It would have been obvious to one of ordinary skill in the art to include in the evaluation unit rules of the combined invention of Jilk and Mukund the old and well known threshold values since the claimed invention is merely a combination of old elements, and one of ordinary skill in the art would have recognized that it would produce a predictable result of including in the quality assessment rules Jilk, the percentage of tasks done year to date, since it is merely another parameter by which to evaluate a worker.

Jilk further discloses specifying either of said negotiation, which was judged that there is no suitability, and said staff member, who is doing said negotiation, and transmitting data concerning either of the specified negotiation and the specified staff member to a manager terminal (see at least column 23, lines 60-62, wherein the evaluation unit de-certifies the work for a specific task skill, and 24, lines 1 – 8, wherein the de-certification (negotiation that is judged that there is no suitability) automatically generates a review task for the worker's manager (i.e. transmitting to a manager terminal data representing said suitability of negotiation; see also column 6, lines 56-57, wherein a manager is a system user who works as a manager, and column 6, lines 1, wherein Jilk discloses at least one worker terminal (i.e. manager terminal)). Examiner notes that de-certification is representing negotiation which is judged that there is no suitability (e.g. worker's poor performance of a task skill), and that generating a review task for the worker's manager is transmitting data representing said work (e.g. de-certification).

16. In respect to claim **23**, Jilk discloses a value calculated based on said numbers of activity times or said activity times for past successful negotiations and said numbers of activity times or said activity times for past failed negotiations (see at least column 25, which discloses mean time between failure (*i.e. number of activity times for past failed negotiations*) or consecutive success (*i.e. a number of activity times for successful negotiations*), and a value calculated by said problem settlement rates for said past successful negotiations and said problem settlement rates for said past failed negotiations (see at least column 9, lines 14 – 17, which discloses error rate and productivity (*i.e. problem settlement rates for said past successful negotiations and said problem settlement rates for said past failed negotiations*)).

However, neither Jilk nor Mukund explicitly disclose wherein said threshold value of said number of activity times or said activity time is a value calculated based on said numbers of activity times or said activity times for past successful negotiations and said numbers of activity times or said activity times for past failed negotiations, and said threshold value of said problem settlement rate is a value calculated by said problem settlement rates for said past successful negotiations and said problem settlement rates for said past failed negotiations.

Examiner notes that threshold values are old and well known.

It would have been obvious to one of ordinary skill in the art to include in the error rate, productivity and worker performance calculations of Jilk the old well known determining of threshold values since the claimed invention is merely a combination of old elements, and one of ordinary skill in the art would have recognized that it would produce a predictable result of

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having a minimum error rate, productivity and overall worker performance levels for evaluation purposes.

17. In respect to claim **24**, Jilk and Mukund disclose wherein said data representing said suitability of said negotiation includes data representing a region, to which said negotiation to be processed belongs, among a plurality of regions in a plane. Examiner notes that all data represents a region on a graph, since the value of the data drives the location on the graph which the data point is plotted. Therefore, Jilk and Mukund disclose the data includes data representing a region.

In regards to wherein said plane is mapped with an axis for said number of activity times or said activity time and an axis for said problem settlement rate, and said plurality of regions are obtained by dividing said plane by said threshold value of said number of activity times or said activity times and said threshold value of said problem settlement rate, this is merely describing the result of the data that represents a region, and it has been held that a wherein clause that merely states the result of the limitations in the claim adds nothing to the patentability or substance of the claim ((*Texas Instruments Inc. v. International Trade Commission* 26, USPQ2d 1010 (Fed. Cir. 1993); *Griffin v. Bertina*, 62 USPQ2d 1431 (Fed. Cir. 2002); *Amazon.com Inc. v. Barnesandnoble.com Inc.*, 57 USPQ2d 1747 (CAFC 2001)).

Conclusion

18. The prior art made of record and not relied upon considered pertinent to Applicant's disclosure.

- a. Lefave (U.S. Patent 6,704,012) discloses that threshold values and plotting threshold lines is old and well known
- b. Slade et al. (U.S. Patent 4,671,772) discloses a performance appraisal and training method and system.
- c. Rassman et al. (U.S. Patent 4,937,743) discloses a method and system for monitoring and dynamically managing resources.
- d. Haq et al. (U.S. Patent 6,275,812) discloses a system for dynamic resource management.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALAN MILLER whose telephone number is (571)270-5288.

The examiner can normally be reached on Mon - Thur, 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, BRADLEY BAYAT can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. M./

Examiner, Art Unit 3624

/Bradley B Bayat/

Supervisory Patent Examiner, Art Unit 3624